

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of the California Public Utilities)	
Commission for Delegated Authority to)	CC Docket No. 99-200
Implement Specialized Transitional Overlays)	

**PETITION OF THE CALIFORNIA
CABLE & TELECOMMUNICATIONS ASSOCIATION
FOR RECONSIDERATION**

Pursuant to Section 405 of the Communications Act and Section 1.104 and 1.106 of the Commission's rules,¹ the California Cable & Telecommunications Association ("CCTA")² respectfully petitions the Commission for reconsideration of its Order Granting, In Part, the *Petition of The California Public Utilities Commission ("CPUC" or "California Commission") and the People of the State of California for Authority to Implement Specialized Overlay Area Codes ("SOs")* filed October 6, 2003.³ ("California Order").

¹ See 47 U.S.C. § 405; 47 C.F.R. §§ 1.4(b), 1.104 & 1.106.

² CCTA, an industry association of California cable service providers, is the largest state cable telecommunications association in the country. Its members include more than 250 cable television systems serving 1,350 communities, providing service to almost eight million California homes.

³ See *Order in the Matter of the Petition of the California Public Utilities Commission and of the People of the State of California for Authority to Implement Specialized Overlay Area Codes* ("California Petition"), FCC CC Dkt. 99-200 at 2 (Released September 9, 2005).

I Introduction

As discussed below, the *California Order* must be rejected because it is contrary to statute and the Commission's own numbering orders. Specifically, the *California Order* violates the Telecommunications Act's⁴ mandate requiring that numbers be made available on an equitable basis and for the provision of number portability. Additionally, the *California Order* violates the Commission's own number administration rules and policies by failing to: (1) assure the ability of competitive voice service providers who use Internet protocol ("IP") to obtain numbers on an equitable basis; (2) assure the ability of competitors using IP to port numbers to and from incumbent service providers; (3) optimize the efficient use of area codes to prevent consumers and service providers alike from incurring the costs and hardships consequent to area code changes; (4) adhere to Commission criteria establishing how the Commission will determine the merits of a state SO petition; and (5) prevent area code relief in areas not in need of relief.

Finally, the *California Order* undermines the Commission's effort to encourage deployment of broadband infrastructure to the American people. The Commission has recognized the importance of such deployment, stating that "the changes brought about by the rise of IP-enabled communications *promise to be revolutionary*."⁵ The relatively brief *California Order* threatens to quell that revolution by permitting California to segregate VoIP services into a separate area code accompanied by fax numbers,

⁴ Pub. L. 104-104, 110 Stat. 56 (Feb. 8, 1996), codified in part at and amending the Communications Act of 1934, 47 U.S.C. §§ 151, et seq.

⁵ See *IP-Enabled Service NPRM*, 19 FCC Rcd at 4867; See Also *Order Granting SBC Internet Services, Inc. Authority to Obtain Numbering Resources Directly from the NANPA and /or the Pooling Administrator* CC Docket 99-200 (Released February 1, 2005 at ¶ 8) *Emphasis Added*.

automated teller machines, and automated vehicle response machines. Meanwhile, competitors offering similar services through switched-based or wireless-based technologies will continue to provide customers service using the geographically-based familiar area codes associated with voice services. As discussed below, this result is antithetical to the pro-competitive mandates of Congress and the Commission as well as inconsistent with the Commission's rational number optimization policies. The Commission must therefore reverse its *California Order*.

II Background

Ten years ago Congress gave the Commission exclusive jurisdiction over the North American Numbering Plan (NANP) within the United States.⁶ The Commission exercised that authority over numbering resources through a series of orders carefully crafted to balance two competing goals. On one hand, the Commission worked to ensure that providers have the numbering resources that they need to compete so as to bring new and innovative services to the consumer marketplace.⁷ On the other hand, the Commission developed rules designed to ensure that, to the extent possible, numbering resources are used efficiently both to protect area codes from exhaust and to protect consumers and providers from the consequent costs and burdens of new area codes.⁸ The *California Order* undermines the Commission's measured and balanced numbering policies by arbitrarily and capriciously relinquishing pro-competition

⁶ Pub. L. 104-104, 110 Stat. 56 (Feb. 8, 1996), codified in part at and amending the Communications Act of 1934, 47 U.S.C. §§ 151, et seq.

⁷ See *Second Report and Order and Memorandum Opinion and Order*, FCC Dkt. Nos 96-333 and 96-98, at ¶ 92 (rel. Aug. 8, 1996; see also *Third Report and Order and Second Order on Reconsideration* in CC Docket No. 95-116, FCC 01-362 (rel. Oct. 12, 2001))

⁸ See *Numbering Resource Optimization, Notice of Proposed Rulemaking*, 14 FCC Rcd 10322, (rel June 2, 1999); see also *Number Resource Optimization First Report & Order*, 15 FCC Rcd. 7574, 7652.

and pro-number optimization policies in favor of California's inequitable and otherwise untenable numbering scheme. Accordingly, the Commission must reject the *California Order* if it is to salvage the balanced rules and policy painstakingly developed over the past ten years.

III The *California Order* Fails To Ensure That Numbers Are Available To Carriers On An Equitable Basis

Section 251 (e) (1) of the Telecommunications Act requires unambiguously that telephone numbers must be made available "on an equitable basis."⁹ The Commission initially met that mandate by rejecting the concept of SOs, concluding that area code relief predicated upon service technologies was unreasonably discriminatory and would inhibit competition.¹⁰ In its *Third Report & Order*, the Commission continued to recognize "that placing specific services technologies in SOs could have an adverse impact on the affected customers and service providers."¹¹ The Commission nevertheless lifted its blanket prohibition against SOs and noted that state SO proposals would be considered on a case-by-case basis¹² in accordance with specific criteria set forth in the *Third Report & Order*.

The Commission has yet to adopt a definition of VoIP that is universally applicable. However, it has used the term in certain contexts to include "any IP-enabled services offering real-time, multidirectional voice functionality, including, but not limited

⁹ Pub. L. 104-104, 110 Stat. 56 (Feb. 8, 1996), codified in part at and amending the Communications Act of 1934, 47 U.S.C. § 251(e)(1)

¹⁰ See *Amerititech Order*, 10 FCC Rdc. 4596, at 4608 (1995); also see *Second Local Competition Order*, 11 FCC Rd. at 19518 ¶ 285.

¹¹ *Third Report & Order* ¶ 71.

¹² *Id.* at 72.

to, services that mimic traditional telephony.”¹³ CCTA’s chief concern is that those types of VoIP services currently provided by the cable industry, and that would otherwise compete with traditional facilities-based and wireless-based offerings, will be included in the segregated SOs. This segregation would harm the ability of providers of services using IP to compete fairly with incumbent local exchange companies (“ILECs”) and wireless service providers who use legacy technologies. This is because all customers switching from an ILEC to a VoIP service provider, or from a wireless service provider to a VoIP service provider, would have to change their numbers instead of porting their numbers since VoIP service is to be segregated into its own SOs. The segregated VoIP service providers would be forced to market services using a less familiar area code that is more likely to be associated with fax and ATM machines than with voice services.

Moreover, providers who currently offer circuit switched-based telephony services will be discouraged from incorporating innovative VoIP technologies, since doing so would force their new customers of otherwise similar or identical services into a new area code.

This unfair and disparate outcome is counter to the clear intent of Congress to assure equitable access to numbers. The *California Order* impedes the pro-competitive purposes of the Telecommunications Act¹⁴ by imposing inequitable access to numbers for providers using IP-based technologies in contravention of the Telecommunications Act. Thus, the Commission must reconsider and reverse the *California Order* and give

¹³ See Notice, 19 FCC Rcd at 4866, ¶ 3 n 7; see also *First Report and Notice of Proposed Rulemaking*, FCC 05-116 (released June 3, 2005) ¶ 24.

¹⁴ *Chevron U.S. A. v. Natural Res. Def. Council*, 467 U.S. 837 (1984)

effect to the expressed intent of Congress that in no way countenances a segregated area code for IP-based providers.

A. The *California Order* Thwarts Congress's Number Portability Mandate

The Telecommunications Act protects competitors by obligating local exchange companies to provide number portability in accordance with the Commission's requirements.¹⁵ The *California Order* effectively eliminates the competitive protections afforded by number portability. An SO to which VoIP services are relegated would prevent a customer from porting from one service provider to another provider if one of those providers were to use VoIP technology, because the VoIP service would be restricted to an SO area code. Likewise, a customer who wishes to port from a non-VoIP service to a VoIP-based service, or from a wireless service to a VoIP-based service, would be prohibited from doing so. This outcome would undermine the very purpose of number portability by denying customers the ability to choose among competing service providers without having to sacrifice their preexisting assigned phone number. The *California Order's* failure to preserve the ability of VoIP service providers to port number to and from other service providers unlawfully undermines a key protection afforded competitors by the Telecommunications Act and, therefore, must be reconsidered and reversed.

¹⁵ 47 U.S.C. 251(b)(2)

B. The *California Order* Is Contrary To The Commission's Orders Assuring That Numbering Policies Are Consistent With Pro-Broadband Deployment Policies

The *California Order*'s failure to treat VoIP-based services consistently with other voice services is not only contrary to the Telecommunications Act, but also contrary to the manner in which the Commission has imposed number administration obligations upon VoIP services. For instance, in its recent order adopting rules requiring interconnected VoIP service providers to supply enhanced 911 capabilities to their customers,¹⁶ the Commission recognized the "analogous functionality"¹⁷ of certain VoIP services to traditional land-line services and the customer expectation that VoIP services interconnected with the PSTN will function like a "regular telephone service."¹⁸ Indeed, the Commission recognized that functionality, not underlying technology, should serve as the basis to determine whether to require VoIP providers to supply enhanced 911 capabilities to their customers.

Moreover, the *California Order* undermines the Commission's efforts to promote broadband deployment by easing access to the NANP resources. In the Commission's order granting SBCIS authority to obtain numbering resources directly from the NANPA and or the pooling administrator,¹⁹ the Commission stated its objective in granting the petition was to "help expedite the implementation of IP-enabled services that interconnect to the PSTN; and enable SBCIS to deploy innovative new services and

¹⁶ See *First Report and Order And Notice of Proposed Rulemaking*, FCC 05-116 (Released June 3, 2005). ¶ 1.

¹⁷ *Id.* at ¶ 19.

¹⁸ *Id.* at ¶ 23

¹⁹ *Order Granting SBC Internet Services, Inc. authority to obtain numbering resources directly from the NANPA and /or the pooling administrator* CC Docket 99-200 (Released February 1, 2005)

encourage the rapid deployment of new technologies and advanced services that benefit American consumers.”²⁰ Contrary to Commission intent expressed in the *SBCIS Order*, the *California Order* discourages investment in broadband technologies because it penalizes new providers who use advanced technologies by penning them in an unfamiliar area code and extinguishing their ability to port an existing number.

That result is precisely opposite to federal and state policies promoting broadband use, demand, and technology. While the Commission is free to reverse or modify its numbering policies as they relate to broadband deployment, it must provide some rationale for the change. The *California Order* makes no attempt to reconcile the Commission's previous, pro-broadband deployment policy with the inequitable policy it has authorized California to pursue. Failure to address the issue is, therefore, arbitrary and capricious and requires rejection.²¹

IV The *California Order* Errs by Failing to Rationally Consider the Commission's Own SO Order and Guidelines

Congress has compelled the Commission to ensure that numbers are made available to voice service providers on an equitable basis.²² The Commission has previously acknowledged that SOs are inequitable for those services that are relegated

²⁰ *Id.* at ¶ 8)

²¹ See *Administrative Procedure Act*, 5 U.S.C. Section 706(2)(A). See also *Bell Atl. Tel. Co. v. FCC*, 79 F.3d 1195, 1202 (D.C. Cir. 1996)

²² See 1996 *Telecommunications Act* 47 U.S.C. 251(e) (l). See *Second Report and Order and Memorandum Opinion and Order*, FCC Dkt. Nos 96-333 and 96-98, at ¶ 92 (rel. Aug. 8, 1996; see also *Third Report and Order and Second Order on Reconsideration* in CC Docket No. 95-116, FCC 01-362 (rel. Oct. 12, 2001)

to the SO.²³ Nevertheless, the Commission has now acquiesced to California's request to include VoIP services²⁴ in the new SOs.

As described below, the Commission's *California Order* disregards the Commission's SO criteria and fails to provide a reasoned and rational explanation why this deviation granting the *California Petition* promotes the Commission's goals.

A. The *California Order* Improperly Imposes A New Area Code On Twenty-Five California Area Codes, Regardless Of Whether Relief Is Needed And Despite "Staggering" Consequences

In its *Third Report & Order*, the Commission recognized as an "initial matter" SOs are another form of area code relief.²⁵ "As such," the Commission continued, "any delegated authority granted to state commissions to implement SOs will be limited to areas in which a state has properly determined that area code relief is needed."²⁶ The Commission reasoned that "the effect of allowing SOs to be implemented in areas that are not nearing exhaust *could be staggering*, because of the potential for multiple requests for area codes over a short period of time. In direct contravention of our numbering resource optimization goals, this would lead to an acceleration of NANP exhaust."²⁷ The Commission thereby established this initial criterion as a *mandatory*

²³ See *Ameritech Order*, 10 FCC Rcd. 4596, 4608-12 (1995).

²⁴ It remains unclear from the *California Order* what VoIP services will be included in the SOs since VoIP is any number of features, capabilities, and services that take advantage of the development of technologies that transmit voice communications using Internet Protocol.

²⁵ *Third Report & Order* at ¶ 80

²⁶ *Id.*

²⁷ *Id.* (emphasis supplied).

requirement separate and distinct from the *Third Report & Order's* eight other criteria.

Notwithstanding the Commission's requirement that SOs be limited to area codes in need of relief, the *California Order* makes no reference to the Commission's "initial" mandatory requirement and, contrary to both the letter and spirit of that initial requirement, authorizes California to cover twenty-five or more area codes with two SOs. The *California Order* even fails to acknowledge the existence of its "initial" criterion.²⁸ The record before the Commission contains no determination by California that any of its area codes are in need of relief.²⁹ Moreover, the record contained uncontested analysis based on the FCC's criteria, Industry NPA Code Relief Planning and Notification Guidelines, and NRUF and NPA Exhaust Analysis, demonstrating that twenty-four of California's twenty-five area codes were not candidates for an SO.³⁰ Additionally, the evidence showed that only one area code, the 714 NPA, met the FCC's criteria for the appropriate timing of an SO.³¹ While the Commission is at liberty to reconsider its own rules, it must provide a rationale when it does so.³² If the Commission does not, its rules must be rejected.³³ The Commission offers no

²⁸ The *California Order* notes only eight criteria for state implementation of an all-services overlay and makes no mention of the Commission's "initial" criterion. *California Order* at ¶ 2.

²⁹ Though California made no such assertion in its Petition, the 310 NPA was, according to NANPA and the Industry, in desperate need of relief and, though the California PUC ultimately agreed that relief was necessary, the 310 NPA remains perilously close to exhaust today with only two NXX codes remaining and a new area code not scheduled to open until August of 2006.

³⁰ See *Comments of the California Cable & Telecommunications Association In Opposition to California Petition For Authority to implement Specialized Overlay Area Codes*, CC Docket No. 99-200 filed November 17, 2003, mimeo at 6-7.

³¹ *Id.*

³² See *WorldCom, Inc. v. FCC*, 238 F.3d 440, 460 (D.C. Cir. 2001); *Bell Atlantic Tel. Cos. V. FCC*, 79 F.3d 1195, 1202 (D.C. Cir 1996).

suggestion why its "initial criterion" was not applied or why the "staggering"³⁴ effect of implementing codes where area code relief is not needed is no longer of concern. Thus, the *California Order* must be reconsidered.

B. The *California Order* Fails To Explain How Or Why The California Petition Adequately Meets The Commission's Eight Criteria For SOs

Save for discussion concerning the few limitations the Commission imposed on California,³⁵ the *California Order* offers scant rationale regarding how the Commission reconciled its eight criteria with its general approval of the California-proposed SO plan. The *California Order* simply declares; "California Commission's Petition satisfies the criteria established in the *Numbering Resource Optimization Third Report and Order*."³⁶ Such a bold declaration demands substantiation, yet the *California Order* provides none.

The *California Order* Fails To Justify Its Failure To Abide By Criteria Concerning The Need To Identify Candidate Technologies And Associated Demand On Numbering

The Commission's criterion requires states to detail the technologies or services to be included in the SO. The FCC explained that the technologies should divert significant demand from the underlying area code to extend the life of that area code. Moreover, the Commission states that it would "specifically favor SOs that would include

³³ See *Administrative Procedure Act*, 5 U.S.C. Section 706(2) (A). See also *Bell Atl. Tel Co. v. FCC*, 79 F 3d. 1195, 1202 (D.C. Cir. 1996)

³⁴ *Third Report & Order* at ¶ 80

³⁵ Specially, California is not authorized to include "take-backs" in its SOs. Also, California is not permitted to permanently maintain seven-digit dialing, and instead is granted a one-year waiver of the ten-digit-dialing requirement.

³⁶ *California SO Order* at ¶ 5.

and retain non-geographic based services.³⁷ The criteria requiring a comprehensive explanation of how California would meet this criterion is essential if the Commission is to assess what costs and technical obstacles may arise consequent to the proposed SO. Moreover, the Commission would use these criteria to determine whether the plan would result in any meaningful number resource optimization.

Rather than hold California to those criteria, the *California Order* simply notes that “the California Commission recognizes that a number of technical issues must be resolved before implementing the SOs,” and that “California has presented its SO proposal to various industry members in California and has expressed its intent to work with industry members to resolve outstanding implementation issues.”³⁸ The Commission’s vacant nod towards California’s undefined process of presenting its SO proposal to unidentified “various industry members” [whoever they are] and the declaration that California will “resolve outstanding implementation issues” fails to coherently address any of the criteria established in the Third *Report & Order* regarding the need to identify candidate technologies and associated demand on numbering. Indeed, the Commission’s failure to stand by its most fundamental criterion for the establishment of an SO is arbitrary and capricious, and demands reconsideration.³⁹

³⁷ *Third Report and Order* ¶ 82

³⁸ *Id.* at 5.

³⁹ See footnote 19.

The California Order Disregards Commission Criteria Requiring: (1) An Explanation Of How Calls In The New Area Codes Will Be Rated And Routed; (2) Pursuit of Rate Center Consolidation; And (3) SOs populated by Non-Geographic Services

The *Third Report & Order* requires that petitions for SOs specify how rating and routing of calls placed between underlying area codes in the SO NPA would be addressed.⁴⁰ The *Third Report & Order* also states that the Commission “will look favorably upon petitions from state commissions pursuing other number optimization measures in the underlying area code, such as rate center consolidation[.]”⁴¹ Finally, the *Third Report & Order* expresses a strong preference on the part of the Commission for SOs populated by non-geographic based services.

California’s plan to “match”⁴² the new SOs with existing California rate centers fails to comply with the *Third Report & Order* on all three accounts. This is because specific rating and routing information is necessary to determine whether the SOs are consistent with meaningful, cost-effective number optimization measures. Rather than providing specific rating and routing information in its petition, California declared only that all rate centers would be “matched.” Under California’s plan to duplicate all rate centers, some services that require a state-wide footprint will require either an NXX code or a one thousand number block in numerous rate centers. The *California Order* does not address whether, or how, the proposed two new area codes would furnish enough numbers to provide various types of service providers with sufficient resources

⁴⁰ *Third Report & Order* ¶ 83

⁴¹ *Id.* ¶ 94

⁴² See Petition of the California Public Utilities Commission and of the People of the State of California for Authority to Implement Specialized Overlay Area Codes, FCC CC Dkt. 99-200 (Oct. 6, 2003).

to match the underlying 738 rate centers in California. For example, rate center codes will be required in order to properly route 911 calls from VoIP service providers which plan to use "pseudo-Automatic Numbering Information" (p-ANI) codes for the provision of E911. Moreover, paging services will still require a full NXX code for each rate center in which they do business. Depending on how many paging companies operate in California, paging services alone could consume the resources provided by the two new area codes since there are only 792 NXX codes available for assignment in an area code and one statewide pager, incapable of obtaining numbers in one thousands blocks, could conceivably require an entire NXX code (ten thousand numbers) in each rate center.

California's plan to duplicate several hundred rate centers also underscores how the SOs, intended ostensibly for "non-geographic" numbers, are anything but, since the provision of E911 service, for example, will effectively require geographic association at the rate center level. The proposed SOs also means that California cannot follow the FCC's directive to pursue rate center consolidation in the new area codes, since the resulting mismatched rate centers would heighten the probability that 911 calls would be routed to the wrong PSAP, or the PSAP would find it considerably more difficult to identify the geographic location of an E911 caller in the event E911 data is missing from the information transmitted with a 911 call.

The Commission cannot reconcile its *California Order* with its call for rate and routing information, rate center consolidation, and non-geographic based overlays in the *Third Report & Order*. Thus, the *California Order's* fails to comply with the Commission's own criteria and requires reconsideration.

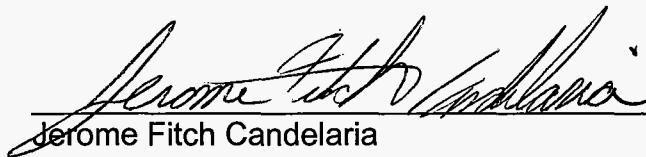
V Conclusion

The Commission's willingness to aggressively manage North America's numbering resources is welcomed and highly laudable. However, the *California Order* affects CCTA and its member companies adversely because the order undermines the Commission's current reasonable and rational national numbering policy and impedes the free entry of new competitors – particularly facilities-based competitors seeking to serve residential customers – into the California local exchange market. The *California Order* does this by erecting significant barriers to entry by facilities-based CLECs seeking to serve residential customers, in violation of the central purpose, and a number of the specific provisions, of the Telecommunications Act.

CCTA urges the Commission not to permit California to implement area code relief policies isolating or segregating VoIP services until such time as the Commission has completed a meaningful and sufficiently comprehensive investigation of VoIP, with input from current and potential services providers.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Jerome F. Candelaria, hereby certify that I have today caused a true and correct copy of the foregoing PETITION OF THE CALIFORNIA CABLE & TELECOMUNICATIONS ASSOCIATION FOR RECONSIDERATION to be served on all known parties of record by serving a copy on each party on the attached list in the manner indicated thereon.

Executed at Oakland, California, this 11th day of October, 2005.


Jerome Fitch Candelaria